

Federal Personnel Manual System**FPM Letter 553-3**Published in advance
of incorporation in FPM
Chapter 553**RETAIN UNTIL SUPERSEDED**

SUBJECT: Submitting Requests for Waiver of Pay/Retirement
Reduction for Military or Civilian Retirees
in Exceptional Circumstances

Washington, D. C. 20415
May 20, 1991

Heads of Departments and Independent Establishments:

1. The Federal Employees Pay Comparability Act of 1990 (FEPCA) permits OPM to authorize exceptions to the reduction in pay or retirement benefits normally required for either military or civilian retirees--

- ° for temporary employment that "is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances" (which may be delegated to agencies); and
- ° "on a case-by-case basis for employees in positions for which there is exceptional difficulty in recruiting or retaining a qualified employee."

Interim regulations implementing this requirement are contained in 5 CFR Part 553, which was published in the Federal Register on February 14, 1991. This Letter sets out the procedures agencies must follow to submit requests and the policies OPM will follow in authorizing exceptions under the law and regulations. These instructions supersede those contained in section 5-5 of FPM Chapter 550.

General Policy

2. Reemployment of military or civilian retirees without reduction in retirement benefits is intended to be a rare exception. (FEPCA specifically refers to "exceptional" and "unusual" circumstances.) The ability to reemploy annuitants without penalty is only one of many management flexibilities available under FEPCA and other laws and regulations. In each case, an agency needs to consider what authority or combination of authorities will be most productive and cost effective.

3. All cases must be approved individually, whether the request is based on emergency or exceptional recruiting difficulty. Attachment 1 contains complete instructions for submitting individual requests. Except in very unusual circumstances, all cases must be approved by OPM. OPM will entertain requests to delegate authority to approve individual cases only when an agency can demonstrate that submission of individual requests would be impracticable in a particular emergency. Attachment 2 contains instructions for requesting delegation of authority to approve individual cases in exceptional emergency situations. OPM will give prompt consideration to all requests.

4. Because an individual's decision to retire should not be influenced or encouraged by the possibility of subsequent reemployment, OPM will generally accept requests only when the individual is already retired. Exceptions to this policy will be made only as discussed in paragraphs 8 and 9 of attachment 1.

Inquiries: Staffing Policy Division, Career Entry Group, (202) 606-0960
or FTS 266-0960

Code: 553, Reemployment of Military and Civilian Retirees to Meet
Exceptional Employment Needs

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Submission by Agency Head

5. All requests must be submitted by the agency head or a designee at the agency or departmental headquarters level. (In the case of the Department of Defense, requests may be submitted by an official at the headquarters level of the military department or Defense agency.) The requirement for submission by the agency head is contained in FEPCA. There is no provision for OPM to accept requests from field installations or individuals.

Actions Upon Employment of a CSRS or FERS Retiree

6. When a CSRS or FERS retiree is employed under this authority, it is crucial that the individual be informed of the effect of reemployment and that the action be properly documented. We will be issuing separate instructions with this information under the retirement and insurance code.


Constance Berry Newman
Director

Attachments

REQUESTING APPROVAL OF INDIVIDUAL CASES

1. Where to submit requests. Send requests for approval of appointments to positions above GS-15 to the Director, Human Resources Development Group. Send requests for approval of appointments to positions at GS-15 and below to the Associate Director for Career Entry. Each request must include the information required below.

Requirements for All Requests

2. Information about the individual:

- ° Name;
- ° Social security number and CSRS or FERS claim number, if any;
- ° Date of retirement;
- ° Type of retirement (voluntary, discontinued service, disability, etc.);
- ° For a military retiree, rank at retirement and type of service (regular or reserve, officer or enlisted);
- ° Amount of current annuity or retired or retainer pay;
- ° Analysis of the individual's qualifications that meet the agency's emergency need or critical skills shortage (attach SF-171);
- ° Certification by the individual that he or she will not accept the job if pay or retirement is reduced; and
- ° Documentation of bona fide offers of nonfederal employment, if any.

3. Information about the position:

- ° Title, series, grade, salary, and duty location;
- ° Type of appointment;
- ° Position description and description of the qualifications required, including any selective factors or other specific requirements that would justify the submission; and
- ° Reason for submission (emergency or exceptional recruiting difficulty). If the request is based on temporary hiring in an emergency, provide the information required by paragraphs 4 and 5. If the request is based on exceptional recruiting difficulty, provide the information required by paragraphs 6 and 7.

Additional Information Required for Requests Based on Emergency Situations

4. Description of the emergency:

- ° The emergency must pose an immediate and direct threat to life or property. A potential or indirect threat (e.g., possibility of increased criminal activity because of a shortage of law enforcement personnel) is not sufficient.

- ° The emergency must be beyond the scope of the agency's normal responsibilities. An agency that has a continuing responsibility to respond to emergencies that occur on a seasonal basis (e.g., forest fires or hurricanes), is expected to have temporary, seasonal, or on-call staff to meet most needs. A request for exception may be appropriate only when the number of emergencies in a season or the severity of a particular emergency creates a need for temporary employees beyond typical seasonal staffing levels.

5. Information about the proposed appointment:

- ° What the proposed appointee will do in the immediate response effort (if that is not evident from the position description); and
- ° Other factors, such as the number of applicants in relation to the number of temporary workers needed, that support the need to fill the particular position without further delay.

**Additional Information Required for Requests
Based on Exceptional Recruiting Needs**

6. Information about recruiting difficulty:

- ° Number of vacancies in the series, grade, and location;
- ° Length of time the particular position has been vacant, and average length of vacancies in such positions;
- ° Average annual turnover in the series, grade, and location;
- ° Description of recruiting efforts (type of publicity, sources contacted, geographic scope, etc.);
- ° Number and quality of applicants responding to those efforts; and
- ° Number of declinations based on pay/retirement issues (indicate how many specifically cited pay/retirement offset concern, how many cited non-federal job offers which would not require any reduction, and how many cited dissatisfaction with the combined compensation they would receive).

7. Consideration of other staffing alternatives, including but not limited to:

- ° Reengineering or redistribution of work;
- ° Contracting;
- ° Use of a recruitment bonus;
- ° Training (including formal education), cooperative education, and similar programs to increase the supply of qualified candidates.

Requests Involving Current Employees

8. Upon implementation of FEPCA. For the 180 days following issuance of the interim regulations on February 14, 1991, OPM will consider requests involving currently reemployed annuitants or military retirees when such requests would permit an agency to retain an individual who occupies a position that meets the statutory criteria. Cases submitted under this one-time provision need not meet all the conditions set out in paragraph 9 but must demonstrate that the individual's position meets the conditions set out in paragraphs 3-7.

9. To retain an employee for critical work. In very unusual cases, OPM may consider requests for exception to pay or retirement reduction when an agency needs to retain the services of a particular individual who is uniquely qualified for an ongoing project. Requests submitted on this basis must:

- ° Describe why the project is unusually critical. Include its importance to the agency's mission, potential costs of project failure or delay, any legislative or Presidential deadlines, and any other relevant factors.
- ° Describe why retaining the individual is critical to the project. Include the knowledges, skills, and abilities possessed by the individual that are essential for successful completion of the project and that could not be acquired by another appointee within a reasonable time. Also explain why the work cannot be assigned to other employees involved with the same project.
- ° Provide documentation that the individual will retire (or, in the case of a reemployed civilian annuitant or a military retiree employed in a civilian position, will resign from that position) if the exception is not granted. Such documentation might include a bona fide offer of non-federal employment or information about changes in or expiration of benefits (such as retirement, health benefits, or life insurance) or other circumstances to support the claim that the employee cannot or will not delay retirement. The agency must also discuss the possibility of using a retention allowance to retain the employee through completion of the critical project.
- ° State the length of time needed to complete the project.

**REQUESTING DELEGATION OF AUTHORITY TO APPROVE INDIVIDUAL
CASES IN PARTICULAR EMERGENCY SITUATIONS**

1. Where to submit requests. Send all requests to the Associate Director for Career Entry. Each request must include the information required below.
2. Description of the emergency:
 - ° The emergency must pose an immediate and direct threat to life or property. A potential or indirect threat (e.g., possibility of increased criminal activity because of a shortage of law enforcement personnel) is not sufficient.
 - ° The emergency must be beyond the scope of the agency's normal responsibilities. An agency that has a continuing responsibility to respond to emergencies that occur on a seasonal basis (e.g., forest fires or hurricanes), is expected to have temporary, seasonal, or on-call staff to meet most needs. A request for exception may be appropriate only when the number of emergencies in a season or the severity of a particular emergency creates a need for temporary employees beyond typical seasonal staffing levels.
3. Description of the positions to be covered by the delegation:
 - ° Include the occupations, grades, and location of the positions to be filled under the delegated authority.
 - ° The positions must be filled in connection with the immediate response effort. OPM will not delegate authority to approve appointments to positions providing administrative or clerical support or long-term followup.
 - ° The work must involve prevention or reduction of the threat to life or property (e.g., treating casualties resulting from a major disaster or military action, cleaning up a major oil spill, or assessing structural soundness following a disaster). OPM will not delegate authority to approve appointments to positions involved in reimbursement or compensation for damage that has already happened.
4. Other conditions to be covered in the delegation, including but not limited to:
 - ° Time limits both for the agency's authority to approve new appointments as exceptions to dual compensation restrictions and for the length of those appointments; and
 - ° Whether and to what level the authority to approve individual appointments may be redelegated within the agency.

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